

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Utilities Telecom Council and Winchester	)	RM-11429
Cator, LLC	)	
	)	
Petition for Rulemaking to Establish	)	
Rules Governing Critical Infrastructure	)	
Industry Fixed Service Operations in	)	
the 14.0-14.5 GHz Band	)	

**COMMENTS OF THE EDISON ELECTRIC INSTITUTE**

The Edison Electric Institute ("EEI") hereby submits the following comments in the above referenced proceeding and urges the Federal Communications Commission ("Commission" or "FCC") to grant the Application for Review<sup>1</sup> filed by the Utilities Telecom Council and Winchester Cator, LLC ("UTC/Winchester") requesting review of the Order of the Commission's Bureaus<sup>2</sup> denying their Petition<sup>3</sup> to establish rules to permit critical infrastructure industry ("CII") fixed service operations in the 14.0-14.5 GHz band ("UTC/Winchester Application"). As demonstrated in the UTC/Winchester Application, the Bureaus' Order is arbitrary and capricious, unsupported by the record, and rests upon reasoning that is seriously flawed. Moreover, the Bureaus' Order raises a serious question of disparate treatment. Consequently, the UTC/Winchester Petition should be reinstated and included in a further notice

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<sup>1</sup> UTC/Winchester Application for Review, In the Matter of Utilities Telecom Council and Winchester Cator, LLC, RM-11429, (filed June 14, 2013).

<sup>2</sup> In the Matter of Utilities Telecom Council and Winchester Cator, LLC, RM-11429, *Order*, DA 13-1093 (rel. May 15, 2013) (OET, WTB, and IB) ("*Order*").

<sup>3</sup> In the Matter of Utilities Telecom Council and Winchester Cator, LLC, Petition for Rulemaking, RM-11429 (filed May 6, 2008) ("*UTC/Winchester Petition*").

of proposed rulemaking that would allow consideration alongside the Qualcomm Petition,<sup>4</sup> which seeks to use the same spectrum, for which the Commission is now seeking public comment.<sup>5</sup>

## **Discussion**

EEI is an association of United States investor-owned electric utilities and industry associates worldwide. Its U.S. members serve almost 95 percent of all customers served by the shareholder-owned segment of the U.S. industry, about 70 percent of all electricity customers, and generate about 70 percent of the electricity delivered in the U.S. EEI frequently represents its U.S. members before Federal agencies, courts and Congress in matters of common concern, and has filed comments before the Commission in various proceedings affecting the interests of its members.

EEI's members make extensive use of communications as providers of CII services, both as owners and operators of private communications systems, and as end-users of commercial communications networks. They are in fact among this nation's largest users of communications networks and services and, as recognized in the National Broadband Plan, have a growing need for spectrum in order to carry out their core mission of safely and reliably delivering electric service to most, if not all, of the nation's residential and business consumers. This need has become even more critical as a result of weather events such as Hurricane Sandy where private

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<sup>4</sup> In the Matter of Amendment of the Commission's Rules to Establish a Next-Generation Air-Ground Communications Service on a Secondary Licensed Basis in the 14.0 to 14.5 GHz Band, Petition for Rulemaking, RM-11640, (filed July 7, 2011) ("*Qualcomm Petition*").

<sup>5</sup> In the Matter of Expanding Access to Broadband and Encouraging Innovation through Establishment of an Air-to-Ground Mobile Broadband Secondary Service for Passengers Aboard Aircraft in the 14.0-14.5 GHz Band, RM-11640, Notice of Proposed Rulemaking, FCC 13-66 (rel. May 9, 2013) ("*Air-to-Ground NPRM*").

utility networks remained in service and available to CII emergency response crews even after commercial networks went down.

EEI supports the UTC/Winchester Petition because the proposed CII operations would be used for point-to-point, point-to-multipoint and transportable fixed operations by CII users. Under the proposal, CII users would have quick access to a high-capacity link during emergencies which would be helpful in enabling CII crews to more quickly and more safely restore CII services.<sup>6</sup> It is therefore very troubling that in this instance the Bureaus seem to be giving priority, even with regard to basic consideration, to secondary services for airplane passengers over the needs of CII crews in emergencies such as storms, fires, air crashes etc. Moreover, contrary to the notion put forward in the Bureaus' Order, "access to pole attachments" cannot suffice for needed spectrum particularly when the poles may be down due to storms or telecom provider central offices flooded and without sufficient back-up power.<sup>7</sup>

EEI agrees with UTC/Winchester that the Bureaus' Order appears to be premised on the erroneous finding that there is no need for additional spectrum to provide support for CII emergency response crews. EEI also agrees that the disparate treatment of the UTC/Winchester and Qualcomm Petitions cannot be justified. EEI incorporates and adopts all of the UTC/Winchester arguments on these points.

For the Commission to not even consider the UTC/Winchester Petition side-by-side with the Qualcomm Petition would be disturbing given the FCC's desire "to enhance network reliability, resiliency, and security" and the fact that the "FCC staff has historically worked with

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<sup>6</sup> *UTC/Winchester Petition* at 3-4.

<sup>7</sup> *Order* at 6.

utilities to find appropriate ways to address these [utilities' critical infrastructure and routine communications] needs."<sup>8</sup>

### **Conclusion**

WHEREFORE, for the reasons stated above, EEI urges the Commission to grant the UTC/Winchester Application for Review, reinstate the UTC/Winchester Petition and include the Petition in a further notice of proposed rulemaking that would allow consideration, side-by-side with the Qualcomm Petition.

Respectfully submitted,

EDISON ELECTRIC INSTITUTE

/s/ David K. Owens

David K. Owens

Executive Vice President

H. Russell Frisby, Jr.

Jonathan P. Trotta

Counsel

STINSON MORRISON HECKER LLP

1775 Pennsylvania Ave, NW, Suite 800

Washington D.C. 20006

(202) 785-9100

(202) 785-9163 (Fax)

rfrisby@stinson.com

jtrotta@stinson.com

Aryeh B. Fishman

Associate General Counsel, Regulatory Legal  
Affairs

Office of the General Counsel

Edison Electric Institute

701 Pennsylvania Avenue, NW

Washington, DC 20004-2696

(202) 508-5000

afishman@eei.org

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<sup>8</sup> Prepared Remarks of FCC Acting Chairwoman Mignon L. Clyburn UTC Critical Infrastructure Communications Policy Summit, June 20, 2013.